

November 7, 2018

Mr. Henry Leskinen
Eco-Science Professionals
P.O. Box 5006
Glen Arm, MD 21057

Re: Vincent Estates Road Right-of-Way
Forest Conservation Variance
Tracking # 06-18-2847

Dear Mr. Leskinen:

A request for a variance from the Baltimore County Code Article 33, Title 6 Forest Conservation was received by this Department of Environmental Protection and Sustainability (EPS) on October 29, 2018. This request would allow removal of one specimen tree in a 60-foot wide right-of-way deeded to Baltimore County for the purpose of constructing an access road to the proposed Vincent Estates subdivision. The specimen tree proposed for removal is a 31.5-inch diameter at breast height red maple in poor condition located fifty-five feet from Vincent Road. There are no other specimen trees in the right-of-way. The specimen tree is proposed for removal because it will be impacted by the proposed access road for the subdivision.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of this property. There is a 60-foot wide right-of-way adjacent to Vincent Road deeded by the property owners at 10404 Vincent Road to Baltimore County. The developer of Vincent Estates subdivision intends to use this right-of-way to construct an access road to the proposed subdivision. The specimen tree and its critical root zone take up nearly the entire width of the right-of-way making it impossible to utilize the right-of-way without impacting the specimen tree. Denying the petitioner the ability to use the existing right-of-way due to the location of the specimen tree would deprive the petitioner of the intended use of the right-of-way. Consequently, we find that this criterion has been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The specimen tree and its critical root zone take up nearly the entire width of the right-of-way. The need to remove the specimen tree is a result of its location in the right-of-way and the area needed to construct an access road and grass swale to address storm water run-off. These circumstances are unique to this property and not the general conditions in the neighborhood. Therefore, we find the second criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. There are other access roads in the neighborhood that support subdivisions similar in size to the proposed Vincent Estates subdivision. Therefore, we find that granting the variance will not alter the essential character of the neighborhood; thus, this criterion has been met.

The fourth criterion (Subsection 33-6-116(e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. There are no wetlands or streams located within the existing right-of-way. The petitioner will utilize best management practices to prevent excess sediment from leaving the site during construction of the access road. Therefore, we find that granting the variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116(e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The variance request arises from the location of the specimen tree within the existing right-of-way. Due to the size of the specimen tree and its critical root zone, it is impossible to build an access road without impacting the specimen tree. Therefore, the petitioner has taken no actions necessitating this variance prior to its request, and this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. The specimen tree proposed for removal is in poor condition. The tree has been heavily pruned and many of the branches show signs of decay. The tree is located in an open lawn area and not associated with any forest. Given the condition and location of the tree, we find that this variance request is consistent with the spirit and intent of Article 33 of the Baltimore County Code. Therefore, this criterion has been met.

Based on our review, this Department finds that all of the required criteria have been met. Therefore, the requested variance is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. No mitigation is required for the removal of this specimen tree because it is in poor condition.

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2. The final forest conservation plan for Vincent Estates must reflect the conditions of this variance and show the critical root zone (CRZ) of all specimen trees on or near the property (i.e. with CRZ on the property).
3. All plans prepared for Vincent Estates subdivision must include the following note:

“A special variance to the Forest Conservation Law was granted by Baltimore County Department of Environmental Protection & Sustainability on November 7, 2018 to allow the removal of one specimen tree in the 60-foot wide right-of-way to be utilized as an access to the Vincent Estates subdivision. No mitigation is required for the removal of this specimen tree since it is in poor condition. “

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If there are any questions regarding this correspondence, please contact Mr. Gris Batchelder at (410) 887-3980.

Sincerely,

David V. Lykens
Deputy Director

DVL/cgb

cc : Marian Honeczy, Maryland Department of Natural Resources
John Motsco, Little and Associates, Inc.

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I/we agree to the above conditions to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

Responsible Party's Signature

Date

Responsible Party's Printed Name